vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.285 OF 2005
IN
SUIT NO.32 OF 2006

A.B. Upadhyay ... Plaintiff

V/s.

Gulam Mohammed Usman Osmani & Ors. ... Defendants

Mr.A.C. Singh i/b K.K. Pandey for Plaintiff
None for Defendant No.1
Mr.V.A. Thorat with R.K. Yadav for Defendant Nos.2 to 6

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **JUNE 22, 2006**

P.C.:

. The Plaintiff has claimed an injunction against the Defendants from disturbing his physical possession in respect of the suit premises being Survey No.52 Part, C.T.S. No.1072 Part and 1073 Part, admeasuring about 432.5 sq.metres in village Dahisar, Taluka Borivali, Mumbai. According to the Plaintiff, he has been in possession of this plot of land and the structures thereon for a number of years. The Plaintiff claims in this suit that he is in possession of the suit property pursuant to an agreement of tenancy whereby the original owner had accepted him as a tenant from the year 1961. It appears that the original owner was the father of the defendant No.1. After the death of the original owner, the Defendant No.1 cancelled the agreement of 1961. However, the plaintiff filed a suit being RAD Suit No.772 of 1981 in the Small Causes Court at Bombay for

declaration of his tenancy rights in respect of the suit premises. The Plaintiff contends that he is likely to be dispossessed by the Defendants and therefore his right in the property be protected. The Plaintiff has also contended in the suit that he is in adverse possession of the suit property.

2. It appears that the original owner of the suit property was one Mohammed Usman Osmani. He granted a lease of 97 years on 2.11.1966 in favour of five brothers known as the Dadi brothers. The Dadi brothers constructed a residential building consisting of three wings on the suit property. The parties had also executed an agreement of lease in respect of possession of the vacant land. Thus from 9.6.1977, the Dadi brothers have been occupying the entire property admeasuring 4000 sq.yards. It appears that 4 of the brothers relinquished their leasehold rights in favour of the 5th brother, who in turn relinquished his rights in favour of Ahmed A. Dadi, the predecessor in title of Defendant Nos.2 to 6. It appears that after the original owner died on 23.4.1967, the sole lessee Ahmed A. Dadi sought permissions from various statutory authorities for developing the open spaces of the property.

3. The Defendants contend that the plaintiff encroached upon their land along S.V. Road by erecting structures. It appears that a notice under section 351

of the Mumbai Municipal Corporation Act was issued to the Plaintiff as well as the occupiers of the structures. A suit was filed by the Plaintiff in the City Civil Court challenging the notice issued. As the Notice of Motion filed by the Plaintiff was dismissed the structures were demolished on 26.7.1979. The plaintiff then reerected the structures on the suit property when a notice under section 351 was issued again. A suit was filed by the Plaintiff challenging this notice. The tenants of the Plaintiff also filed a suit in the City Civil Court in respect of the notices issued to them. It appears that the Notices of Motion filed in the suits were dismissed and appeals were preferred by the Plaintiff. The appeals were also dismissed. The Special Leave Petitions preferred by the Plaintiff met with the same fate. As a result, the Municipal Corporation demolished the structures on the suit property on 14.9.2000.

4. It is contended on behalf of the Plaintiff that although the structures may have been demolished, his possession in respect of the suit property has not been disturbed and, therefore, he is entitled to the relief claimed in the Motion.

5. In my view, no interim relief can be granted to the plaintiff. The plaintiff has not stated in his plaint as to when he was put in possession of the suit property after the structures were demolished. Nor has

he disclosed when his possession became adverse and whether it became adverse to the defendant No.1 or Defendant Nos.2 to 6. As held by the Supreme Court in *Parwatabi v/s. Sonabai & Ors.,* **AIR 1997 SC 381**, the Plaintiff who claims adverse possession must establish the exact date on which the adverse possession started running. This is because Article 65 of the Limitation Act postulates that for possession to become adverse, the limitation starts from the date when the possession of the Plaintiff became adverse to the Defendant. It is necessary therefore, for the plaintiff to establish in the first instance that he was in possession and that his possession had become adverse to either Defendant No.1 or Defendant Nos.2 to 6.

6. The only basis which the Plaintiff claims to be in adverse possession is that the suit for possession had been filed by the predecessor in title of Defendant Nos.2 to 6 against both Defendant No.1 as well as the Plaintiff. It is submitted on behalf of the plaintiff that he was in possession and continues in possession even today. This submission cannot be accepted. The possession of the Plaintiff cannot be inferred from circumstances. Once the structures on the land are demolished, the plaintiff must show or establish that he continues to be in possession even after the demolition of the structures. The plaintiff has not been able to demonstrate the same. No case for interim relief has been made out. Motion dismissed.